



TESTIMONY OF

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BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRADE AND
CONSUMER PROTECTION
OF THE
COMMITTEE ON ENERGY AND COMMERCE
OF THE
U.S. HOUSE OF REPRESENTATIVES

REGARDING H.R. 3402
CALLING CARD CONSUMER PROTECTION ACT

SEPTEMBER 16, 2008

Mr. Chairman and Members of the Subcommittee, my name is John Eichberger. I am Vice President of Government Relations for the National Association of Convenience Stores (NACS). I appreciate the opportunity to appear before you today and to provide to you NACS' views on H.R. 3402, the "Calling Card Consumer Protection Act."

NACS is an international trade association representing the convenience store industry. The industry as a whole operates about 145,000 stores in the United States, generated \$577.4 billion in sales in 2007 and employs approximately 1.7 million workers. This really is an industry of small businesses. More than 60 percent of convenience stores are owned by one store operators. NACS has members in every state and Congressional district in the United States.

Mr. Chairman, at the outset NACS wishes to commend the sponsors of H.R. 3402 for their efforts to protect the right of consumers to have their reasonable expectations fulfilled when they purchase prepaid calling cards. As a representative of responsible retailers, NACS strongly supports efforts to promote consumer confidence by reducing deceptive or fraudulent practices with respect to the sale of any product.

- **Prepaid Calling Cards and the Convenience Store Industry**

Over the past decade, prepaid calling cards have become a significant sales item in many, if not most, convenience stores. Convenience stores are present in virtually all of the country's neighborhoods and often are the only facilities open at all times. As a consequence, consumers frequently rely on their neighborhood convenience store for items such as prepaid calling cards. In 2007, the industry sold more than \$350 million worth of these cards.

It is important to us as it would be to any responsible retailer that the products convenience stores sell fulfill their promise to our customers. The bulk of the convenience store industry sales are made to “regular customers,” i.e., people who frequently shop at our locations.

The key to successful retailing is establishing a “relationship” with a consumer in which that consumer develops positive expectations for its purchases and has those expectations fulfilled on a consistent basis. The fulfillment of reasonable expectations is the “value proposition” offered to and accepted by consumers at retail locations and which forms the basis for regular patronage by that particular consumer. The thing most likely to break a consumer’s “habit” of patronizing a particular location is that establishment’s failure to fulfill a customer’s expectations with respect to transactions at that location. Perceiving that he or she has been “ripped off” – not getting what he or she reasonably expected – is the single incident most likely to change a customer’s perception of a store and to break the patronage habit.

With respect to items like prepaid calling cards, NACS members are in one crucial way in a position virtually identical to that of an end user. NACS members must accept the representations of those who provide the cards as to the amount of service that will be received by the ultimate user of these devices. Retailers are simply not able, on an independent basis, to test these items to determine if they fulfill the claims made in their advertising. Retailers, in good faith, accept the claims of prepaid calling card providers. Given the ability that a provider’s deceptive or fraudulent practice has to injure a retailer’s relationship with its customers, and therefore its economic well being, NACS strongly supports efforts by this Subcommittee to attack such practices.

- **NACS' Position on H.R. 3402**

Neither NACS nor its members are in a position to understand the intricacies of the telecommunications industry, its charges, and its needs—any more than we are experts in the homogenization and pasteurization of a gallon of milk. As a consequence, my primary purpose in appearing today is to explain how our industry is involved in the prepaid calling card business and to support the efforts of the bill's sponsors to eliminate consumer deception and fraud perpetuated by unscrupulous providers in that business.

NACS believes that the bill's proposed reliance upon the Federal Trade Commission ("FTC") to promulgate and enforce a regulatory regime by which the bill's objectives may be achieved is appropriate. The FTC really is America's consumer protection agency. It has broad and deep experience with respect to the marketing of consumer products. The standards that it employs to establish and prove consumer injury are widely known and accepted. As a consequence, NACS believes it is the "right tool" for this job and urges the Subcommittee to proceed accordingly.

As the Committee prepares for consideration of this legislation, NACS would like to suggest you consider some minor modifications. In our industry, many convenience stores are supplied by multi-product distributors. These companies may deliver to a store products as diverse as potato chips, candy bars, car fresheners and pre-paid calling cards, all at the same time. These third party distributors are not the companies who provide the service or produce the cards and accompanying materials. They simply act as middle-men between the service provider and the retailer. It is NACS opinion that these individuals should be included in the exemption articulated in Sec. 2 (4) of the bill defining "prepaid telephone calling card distributor."

In addition, NACS would also suggest additional clarification of liability associated with Sec. 4 (b)(1)(C)—Advertising and Other Promotional Materials. NACS fully supports the requirement that all terms and conditions be properly disclosed on all promotional materials. However, it is important that the legislation recognize the fact that retailers should not be held liable for violations of these disclosure requirements on point of sale materials. It is not reasonable to assume that a convenience store manager will be adequately familiar with the applicable statute to ensure proper disclosure on these materials. Likewise, third party distributors, such as those I described earlier, should not be held liable for such inaccuracies unless they themselves were the producer of the materials.

Mr. Chairman, the victims of deceptive practices in this business are frequently those who can least afford it and have the smallest ability to protect themselves or obtain remedy. NACS applauds the interest of this Subcommittee on this topic.

Thank you for the opportunity to share NACS views on this topic. I will be happy to respond to any questions.